

No. 9(1) 82-6-Lab./2267.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 Act XIV of 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s A. K. Melts Pvt Ltd. DLF Area, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH, KAUSHIK, PRESIDING
OFFICER, LABOUR COURT, FARIDABAD

Reference No. 395 of 1981

Between

SHRI RAM KISHAN SINGH. WORKMAN AND THE RESPONDENT
MANAGEMENT OF M/S A. K. MALTS PVT. LTD., D. L. F.
AREA, MATHURA ROAD, FARIDABAD

Shri M. K. Bhandari, for the workman.

Shri J. S. Saroha, for the respondent.

AWARD

This reference No. 395 of 1981 has been referred to this Court, by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/239/81/61661, dated 28th December, 1981, under section 10 (i) (c) of the Industrial Disputes Act, 1947, existing between Shri Ram Kishan Singh, workman and the respondent management of M/s A. K. Malts Pvt. Ltd., D. L. F. Area, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Ram Kishan Singh, was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties, on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to demand notice and claim statement is that he joined the services on 13th September, 1978 as Chowkidar @ Rs. 207 per month and he was terminated on 18th September, 1981 without any reason or chargesheet notice pay or retrenchment compensation. The termination was illegal and unjustified and the workman is entitled for his reinstatement continuity of service and back wages.

The case of respondent according to the written statement is that the claimant joined the services of the company on 1st March, 1979 as helper on a consolidated salary of Rs. 180 per month. He was suspended on 30th July, 1981 on account of misconduct for his ill-treatment, refusal to work, for creating indiscipline and threatening his Supervisor to kill and beat him. He was served with a chargesheet which he refused to accept in the presence of witnesses and same was sent through Registered A. D. and the same received back with the postal authority remarks "REFUSED TO ACCEPT". The Chargesheet and notice was published in the Local Hindi paper "Amar Sawera" but he did not appear himself before the enquiry. So the enquiry was conducted *ex parte*. The workman was given show cause notice after receiving findings of the enquiry officer but he refused to accept the same on basis of the charges levelled against him and the nature of charges are serious and grave so his services were dismissed on 18th September, 1981. So the workman was dismissed from the services after proper enquiry and the reference may be answered in their favour.

On the pleadings of the parties, following issues were framed :—

1. Whether the fair and proper enquiry was held by the respondent? If so, to what effect?
2. Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?

My findings on the preliminary issue is as under :—

Issue No. 1—

The representative of the respondent argued on this issue that as stated by Shri Randhir Singh MW-1 he was appointed as Enquiry officer by the respondent,—*vide* letter-dated 22nd August, 1981 to enquire the charges against the workman. The chargesheet was issued to the workman but he refused to accept the same and it was sent through UPC on 24th August, 1981 but the same was received back un-delivered then a letter dated 4th September, 1981 was again sent to the workman which was received back un-delivered. After these letters a notice was published in Hindi News Paper along with chargesheet on 7th September, 1981 fixing the date of 11th September, 1981. The respondent again sent a registered letter 11th September, 1981 to the workman which was also received back un-delivered. So the *ex parte* enquiry proceedings were started against the workman and he was found guilty of the charges in the enquiry. The enquiry report was submitted to the respondent. The enquiry was fair and proper.

The representative of the workman argued on this issue that when no chargesheet was delivered to the workman and no opportunity was given to him of being heard, the chargesheet cannot be proper. The workman received no notice of enquiry and he has no knowledge about the date of enquiry so the *ex parte* enquiry cannot be called as fair and proper enquiry.

After hearing the arguments of both the parties, and going through the file, I am of the view that the workman was given no opportunity in the enquiry. He was not given any chargesheet and given no opportunity of being heard. So the *ex parte* enquiry was not fair and proper enquiry. So I vitiate the enquiry and the issue is decided in favour of the workman and against the respondent.

After vitiating the enquiry I issued notices to the parties to lead the evidence on the enquiry and on merits. Both the parties lead their evidence on merits and on enquiry and after hearing the arguments, my findings on the Second issue is as under .

Issue No. 2—

The representative of the respondent argued on this issue that the charges against the workman were that on 29th July, 1981 the workman was on duty with Shri Vir Singh-II in Box No. 6 to overturn the barley which is prepared in the boxes. The Supervisor Shri Deepak Kumar visited the box and found the workman Shri Ram Kishan Singh doing no work and wasting the time. On his asking he rebuked him and abused him and caught him from neck and tried to beat him and also threatened him for dire consequences. To prove this fact Shri Deepak Kumar came in the Court and deposed as MW-3 that he is in the service of the respondent for the last 3 years and his work was to supervise the work of the Helpers. On 29th July, 1981 Shri Ram Kishan Singh and Bir Singh-II were sent to Box No. 6 for overturning the barley and when he visited the boxes at 9.00 a.m. the claimant was wasting time while Shri Bir Singh-II was working. The

duty list are Ex. M-1 shows the dates of the workman working in the shift. When he asked the claimant for the work he rebuked him and used filthy language and tried to beat him but Shri Bir Singh rescued him. He reported the matter to the Manager of the company through a complaint Ex. M-1. The claimant also threatened the Supervisor to kill him outside the factory. He also argued that the same facts were also supported by Shri Vir Singh II, who was co-workman of the claimant. He has stated that Shri Ram Kishan was working with him on 29th July, 1981 in the Box No. 6 and was not working, when supervisor came and asked for the work he refused to work and abused him and tried to beat him. He saved the Supervisor by catching the claimant. If he was not there the supervisor might get serious injury. He further argued that the supervisor has stated in his cross examination that the workman was given the chargesheet which was refused by him. The chargesheet was given by Shri L. D. Sharma Time Keeper who has appeared in the Court as MW-2, who has stated in his statement that as time keeper he tried to deliver the chargesheet to the workman but he refused to accept the same. The representative of the workman asked no question from this witness which shows that the witness has stated truth and it was not rebutted by the workman's representative. He further argued that the workman has admitted in his statement as MW-1 and in his cross examination that Shri Bir Singh and claimant was on duty on 29th July, 1981 in box No. 7 and further admitted that it is correct that at the time of incident Shri Bir Singh-II was there. He has further admitted that the letter Ex. M-3 bears his correct address and the address on Ex. M-A, B, C is also correct. He further argued that the claimant scuffled the supervisor even outside the court on the date of hearing. The matter was brought to the knowledge of the presiding Officer through an application. The Presiding officer called the workman in the court room and directed him to behave properly in future. The respondent also lodged a complaint with the police and the police is investigating the matter, which shows that how furious the claimant is? and how he behave even in the court. The workman has stated in the cross examination that he came at the gate of the factory for two or three days and on 3rd day he was abducted by six or seven persons and was kept in a close room, but on the court question he cannot tell the names of the persons. He simply stated that these persons left him at unknown place and they left him at Gurgaon after 1½ months. It is not a believable story because the same person have all knowledge of these things and period of one month is a very long period. The surprising thing is that he did not report this matter to any one. He should have report this matter to the police which is very serious crime. This shows that the story was made out by the workman and could not be believed. The workman has produced three witnesses WW-1 Shri Sukh Ram, WW-3 Ram Balak who has stated that their duties shown are correct and they were in the next box on the day of happening. There was no such happening with the supervisor, but this cannot be believed as compare with the behaviour of the workman.

The representative of the workman argued on this issue that the workman was a union leader and joined the service on 15th September, 1978 and receiving a salary of Rs 260 per month. He was stopped at the gate on 30th July, 1981 as stated by Shri Ram Kishan Singh claimant as WW-1. There was no dispute with the supervisor on 9th July, 1981 and this was simple allegation to remove a union leader. He sent Ex. W-1 to the respondent to mark his presence as he came in the factory. He was not given any chargesheet and the enquiry was the show to remove the workman. The workman was terminated without any reason or cause the claimant was an old employee and he cannot be terminated in this way. It is a case of retrenchment and the respondent has not paid any retrenchment compensation to the workman. So the termination was illegal and the workman is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and going through the file I am of the view that the arguments put forward by the respondent have some

force. The claimant behave improperly even in the court premises and he slapped the supervisor when he came to give his evidence in this case. The matter was reported to me. On which I called the workman in the court room and asked to behave properly in future and direct the respondent to take legal stand in the matter. The behaviour he showed in the court also reflect the behaviour in the factory and such person cannot be tolerated where the work is worship and if the workman have like this no factory can be successful. Before the arguments on this issue the respondent file one application to appoint some commission to see whether the voice of one box can be heard in another box when the factory is running and whether there is door in between the boxes. Instead of appointing legal commission I visited the factory along with both the representative to see the matter. The boxes were air conditioned and while working it is very difficult to hear the voice of one box to another box, because of the noise of the machine. At my visit there were no doors in between the two boxes. There were doors which were closed I cannot certify by looking the closed doors when these were closed. The witnesses came in favour of the workman in the court have deposed that they were working in next box and they heard no such voice between the supervisor and the claimant. These workmen cannot be believed after inspecting the factory because it is very difficult to hear the voice from one box to another box. So these workman cannot be believed. So the chargesheet was proved by the respondent by producing the supervisor in the court and the workman cannot be believed. The termination made by the respondent is justified and proper and the workman is not entitled for any relief in these circumstances.

This be read in answer to this reference.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

Dated the 3rd March, 1983.

Endorsement No. 468, dated the 16th March, 1983

Forwarded. (four copies) to the Commissioner, and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana Faridabad.

No. 9(1)82-6Lab/2726.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 of Act No. XIV of 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s The Bangal National Textile Mills, Pvt. Ltd., 14/5, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT HARYANA, FARIDABAD

Reference No. 398 of 1981

between

SHRI AJIT SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF
M/S THE BANGAL NATIONAL TEXTILE MILLS, PVT. LTD., 14/5, MATHURA
ROAD, FARIDABAD

Shri Darshan Singh, for the workman.

Shri R. C. Sharma, for the respondent management.

AWARD

This reference No. 398 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/132/81/61608, dated the 28th December, 1981, under section 10(1)(c) of the Industrial Disputes Act, 1947, existing between Shri Ajit Singh, workman and the respondent management of M/s Bangal National Textile Mills Pvt. Ltd., 14/5, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Ajit Singh was justified and in order ? If not, to what relief is he entitled ?

The notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to demand notice and claim statement is that he was permanent workman since 1st June, 1976 and was drawing Rs. 400 per month. He was given false charge-sheet and false enquiry was under taken. He was given no opportunity to defend in the enquiry and terminated his services on 16th June, 1981.

The case of the respondent according to written statement is that the claimant was charge-sheeted on 13th March, 1981 and also suspended as the charges were of very serious nature of assaulting and also threatening his supervisor and an additional charge-sheet dated 15th March, 1981 was also issued for refusing to take charge-sheet and giving less production. Shri J.S. Saini made a report against him for the alleged charges. The workman gave the reply and a domestic enquiry was ordered. Shri I. B. Singh was appointed as an enquiry officer. The claimant participated in the enquiry, but refused to sign the proceedings recorded in his presence. The enquiry officer gave full opportunity to the workman to defend himself and cross-examined the witnesses. The enquiry officer gave findings against the workman. The respondent issued the show-cause notice dated 30th May, 1981 and dismissed him on 16th June, 1981 due to very serious nature of allegations. The action of the management was legal. The workman joined on 17th May, 1977 and was getting Rs 424 per month as salary. So the reference may be answered in their favour.

On the pleadings of the parties, following issues were framed :—

1. Whether the domestic enquiry conducted by the management was proper and fair ?
If so, to what effect ?
2. Whether the termination of services of the workman is proper, justified and in order ?
If not, to what relief is he entitled ?

The first issue was ordered to be treated as preliminary issue. The parties lead the evidence on the preliminary issue and argued the same. My findings on the issue is as under :—

Issue No. 1 :

The representative of the respondent argued on this issue that as stated by Shri I. B. Singh he was appointed as Enquiry Officer,—vide Ex. M-1. The workman was issued chargesheet Ex. M-2 & M-3. He proceeded with the enquiry and the enquiry proceeding is Ex. M-4 which is from Page 1 to 14. The workman participated in the enquiry, but refused to sign the proceedings. After closing the proceedings he gave his findings which is Ex. M-5. The representative produced the documents Ex. M-6 to M-11 in the enquiry proceedings. The claimant was found guilty of the charges against him which is given in his findings. The respondent produced Ex. M-14 and M-15 in the enquiry proceedings. The workman was given full opportunity to defend his case.

The representative of the workman argued on this issue that the workman was given no opportunity in the enquiry proceedings. Though he participated in the enquiry but did not sign the enquiry proceedings; because the enquiry proceedings were not proceedings as they are done in accordance with the instructions of the management. The workman was not allowed to be represented by some other workman and he was not given opportunity to cross examine the respondent witnesses. He was also not allowed to give the defence witnesses and it was a false enquiry to terminate the workman.

After hearing the arguments of both the parties and going through the file, I am of the view that the workman was not given opportunity of being heard. The enquiry officer has stated nothing in his statement which shows that the enquiry was not proper and fair. So I vitiate the enquiry. The parties were called again to lead the evidence on the allegation of the workman and argue the same. My finding on the issue No. 2 is as under :—

Issue No. II :

The representative of the respondent argued on this issue that as stated by Shri Joginder Singh Saini as MW-2 that Ex.M-1 is a report which he gave to Mr. Akhori in respect of incident dated 13th March, 1981.

On 13th March, 1981 when he came in the factory at 9.00 a.m. The workman came to him. He was on leave on 11th and 12th March, 1981 and when he came on 13th March, 1981 he found his spectacle broken. He put this spectacle on his table and asked to pay cost of the spectacle. He was asked to explain the facts for the spectacles. He rebuked the witnesses and threatened him for the dire consequences and asked the witness that he has to pay the cost of spectacle because he is responsible of its being broken. He attacked the supervisor which was rescued by other staff members. He further stated that he made statement in the enquiry which is Ex. M-2. He gave the report Ex. M-1 to his superiors to take action. On 14th March, 1981 when he was entering the factory gate, the claimant caught hold of him with his scooter and tried to beat him. The chowkidar at the gate saved him. The claimant was not allowed duty on that day by the management on the report of the supervisor. He further stated that it was not his mistake to break the spectacle. The spectacles were on the seat of the claimant where some other workmen have done mischief for which he attacked the supervisor. The respondent produced another witness Shri Rajinder Pandey watchman of the factory as MW-3 to prove the allegation of the workman who has stated that he knows the claimant and he gave the written report to the Personnel Officer which is Ex. M-9 for the incident dated 14th March, 1981. The report bears his signatures. He reported the matter for the attack on Mr. Saini by Shri Ajit Singh, claimant, and also stated in the report that he abused Mr. Saini. The respondent produced another witness to prove the allegation Shri Ram Sanchi Singh, Head Time Keeper who has stated that there was lock out in the factory from 9th February, 1981, to 21st June, 1981. The claimant used to work in the Knitting Division and that division was working and not as the division has been closed by the respondent from 12th September, 1981. He further argued that the workman has admitted in his statement as WW-1 that he was on leave on 11th and 12th March, 1981 and when he came on 13th March, 1981, he found his spectacle broken which was shown to Mr. Saini in his office which proves that the claimant went in the office of Mr. Saini but he has stated that there was no such happening, but his co-workman, who has appeared as WW-2 Shri Bihari Lal, has stated that there was some exchange of hot words between Shri Saini and the claimant which prove the incident. The another co-workman of the claimant Shri Kaleshwar Parshad, who has appeared as WW-3 has also confirmed about the incident. He stated in his statement that when the claimant came in the factory he found his spectacles broken and he went in the office of Mr. Saini. But he had stated that he heard nothing about any exchange of hot words. He has also stated in his cross-examination that he did not know about the incident of 14th March, 1981. Even the witnesses of the workman corroborate the allegation of the workman and it is admitted fact that there were exchange of hot words between the two which were without the fault of the supervisor. How a supervisor is responsible for the property left by the workman of his own negligence. It is not the duty of the respondent factory to keep safe the spectacle of the workman. It was his duty to take it with him for its safety and when he abuses the supervisor without any fault it was serious allegation on the workman. He further argued that the respondent called Mr. Saini from Madhya Pradesh as witness where he has joined the services after leaving the services of the respondent and he came by air and he cannot waste the time of factory in which he was working and by this means he spent about Rs. 2000 which the respondent has to pay to the witness but on that day when the representative of the workman saw Mr. Saini in the court he left the court without informing, though he was present in the court only five minutes before calling the case, and the workman stated that he left the court as he was ill, because the presence of main witness in the Court which will prove the case in favour of respondent, they wanted to avoid the witness. If he is not examined that day, he would not come in future and if he comes the management has to pay heavy cost to bring him in the court. So the workman has acted as he should not have acted according to rules and standing orders of the company. He not only attacked Mr. Saini on one day but he attacked twice which is proved by the chowkidar and another witness of the respondent. He further argued that the workman has stated nothing in the demand notice and claim statement about the enquiry allegations and how the enquiry is false and improper. There are four lines given in the claim statement and four or five in the demand notice without putting the case which is the basis of whole case. It is because the workman take his own plea according to circumstances without showing the facts in the claim statement and demand notice. The witnesses of the workman cannot be believed because they have stated nothing except there was no dispute between Shri Saini and the claimant in the Court.

The representative of the workman argued on this issue that as stated by the workman he joined the services of the factory in the year 1975. Previously he was in the service of Hamla and there also he was a union leader and he framed the union in the factory. On 13th March, 1981 when he came back from two days' leave he found his spectacle broken which he showed to the incharge Mr. Saini and asked about it. Who stated that he is not responsible for the same. It was broken by Mr. Saini's persons, who were also working in the department and that is why he asked Mr. Saini to get it repaired and there was no exchange of hot words with Mr. Saini. He was stopped at the gate on the next day at 8.00 a.m. and after 15 minutes he left the gate. There was police chowki in front of the factory. He was given no chargesheet and no suspension order and he received no enquiry letter from the enquiry officer. The workman produced another witness Shri Bihari Lal as MW-2 who has stated that he was in the factory and now he is working in another factory. When the claimant came in the factory on 13th March, 1981 he asked about his spectacle broken, on which he told him that it might have broken who were working on the seat for the last two days. On which the claimant went to Mr. Saini with his broken spectacle and there were no exchanges of hot words between the two. The workman left the spectacle on the table of the supervisor. Mr. Saini came in the department and enquire about the spectacle broken. The other witness Shri Kaleshwar Parshad

WW-3 also stated that he knows Shri Ajit Singh, working in the Mandal Department. He was on leave on 11th/12th March, 1981 and when he came from leave on 13th March, 1981 he found his spectacle broken and went to the incharge of the Department Mr. Saini. He saw no dispute between Mr. Saini and the claimant. He further stated that the Contractor's labour work in the department, when the permanent persons were on leave, and contractor's persons work in place of claimant for two days at his seat. There are false allegations on the claimant and the workman was terminated from the service due to his union activities and it is victimisation of the workman.

After hearing the arguments of both the parties and going through the file, I am of the view that the respondent has fully proved his case about the serious allegations of the workman. The workman has failed to prove that the allegations were false. Even the witness as of the workman has corroborated the story of the respondent. In these circumstances the allegations are proved against the workman and the respondent has rightly terminated the services of the workman on the serious charges. It was not the fault of the supervisor to break the spectacle of the workman so the termination was justified and in order and the workman is not entitled to any relief.

HARI SINGH KAUSHIK,

Dated the 9th March, 1983.

Presiding Officer,
Labour Court, Haryana,
Faridabad. "S.S."

Endorsement No. 536, dated the 21st March, 1983.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1) 82-6 Lab./2727.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Rewari Textile Pvt. Ltd., Delhi Road, Rewari :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference Nos. 378 of 1981 and 73 of 1982

between

SHRI RAM SUKH DEV AND SHRI VIDYA SAGAR WORKMEN AND
THE RESPONDENT MANAGEMENT OF M/S. REWARI TEXTILE
PVT. LTD., DELHI ROAD, REWARI

Shri Shardha Nand for the workmen.

Shri M. P. Gupta, for the respondent.

AWARD

These references No. 378 of 1981 and 73 of 1982 have been referred to this court by the Hon'ble Governor of Haryana, vide his order No. ID/GGN/126/81/60824, dated 18th December, 1981 and No. ID/GGN/21/82/17335, dated 1st April, 1982, under section 10(1)(c) of the Industrial Disputes Act, 1947, existing between S/Shri Ram Sukh Dev and Shri Vidya Sagar workmen and the respondent management of M/s Rewari Textiles Pvt. Ltd., Delhi Road, Rewari. The terms of the references are :—

Whether the termination of services of Shri Vidya Sagar and Ram Sukh Yadav was justified and in order? If not, to what relief are they entitled?

Notices were issued to the parties, on receiving these references. The parties appeared and filed their pleadings. The case of the workman according to demand notice and claim statement is that they were permanent employees of the respondent and working as spinner from 1978 and were drawing a salary of Rs. 300 per month. They were terminated on 12th June, 1981 due to trade union activities. So they are entitled for their reinstatement, continuity of service and back wages.

The case of the respondent according to written statement is that the claims of these workmen are false and fictitious and they have never terminated their services but the workmen did not turn up to the factory because they were involved in the criminal case. The management has no objection if the workmen wanted to join their duties. The demand notices are *malafide* and the workmen are not entitled to any relief.

On the pleadings of the parties, following issues was framed :-

1. Whether the termination of services of the workmen is proper, justified and in order? If not, to what relief are they entitled?

My findings on the issues as under :-

Issue No. 1—

The representative of the respondent argued on this issue that these workmen were never terminated from the services. They beat their General Manager on 11th June, 1981 on which an FIR No. 138 was registered with the Police Station, Rewari and these workmen were arrested under section 323, 342, 506/341 IPC. They did not turn up after the arrest. Ex. W-1 is admission from the workmen that they were challaned and arrested. The FIR Ex.M-2 is a very clear proof of the case against them. The workman have also admitted this fact in their cross examination that they were challaned and arrested by the Police and the cases are pending in the Court against them. The workman Shri Vidya Sagar submitted an application before the Authority which is Ex.M-1 in which he has claimed the wages from 1st June, 1981 to 30th November, 1981 @ Rs. 305 per month. The application was filed before the Wages Authority on 18th January, 1982. The application bears the signature of Shri Vidya Sagar which shows that they worked upto 30th November, 1981 which cannot be believed, when they say in their demand notices that their services were terminated on 12th June, 1981. As stated by Shri J. L. Beriwal as MW-2 these workmen were arrested by the Police on the complaint of the management, when they beat the General Manager of the Company. He further stated that on the request of the respondent the learned Court directed the workmen to join their duties when the respondent is ready to give them jobs. Shri Ram Sukh Yadav stated in the statement that he joined the services on 3rd May, 1982 with the respondent on the directions of the court and Shri Vidya Sagar joined the services on 17th July, 1982 according to the directions of the court. The workmen joined the service after two months of the direction given by this court. When they have joined the services of the respondent company shows that the contention of the respondent was not to terminate these workmen and there was no order for the termination as admitted by the workmen in their statement. When they were not terminated by the respondent then the reference is bad in law. The workmen did not come to the factory after the arrest and it is natural when a person is involved in a case with the respondent management he does not try to come on duty. So they did not come on duty on their own and it was not the fault of the respondent not to give the jobs to these workmen.

These workers themselves did not come to join their jobs. The respondent offered jobs to the workmen when they came present in the court which shows clear

intention of the respondent. The workman Shri Ram Sukh Yadav has admitted in his cross-examination that he worked for 1½ months in factory at Alwar. In fact he left Rewari after this case and joined the service at Alwar and remained there up till they were sent to the jobs by the directions of this court. Both the employees had joined the services. Shri Vidya Sagar had joined the service at Panipat, though he denied in his cross-examination. So, the workman are not entitled to any relief.

The representative of the workmen argued on this issue that these workmen were the leaders of the union of the factory and participated in the union activities. The respondent did not relish union activities and they got involved in a false case. After release from the arrest, they went to join the duty as stated by the workmen as WW-1 and WW-2. So they were terminated from the service and they are entitled for the back wages because the workmen have joined the service according to the directions of the learned Court.

After hearing the arguments of both the parties, and going through the file, I am of the view that the arguments put forward by the respondent have some force. The workmen did not join duties after the release from the arrest and went outside Rewari as one of the workmen has admitted in his cross-examination. The intention of the respondent for offering the jobs when they came in the court clearly shows that these workmen were not terminated by the respondent and they themselves did not go to join their duties. In these circumstances, when the workmen have joined their services in the factory, they are not entitled for any relief of back wages.

This be read in answer to these references.

HARI SINGH KAUSHIK,

Dated the 9th March, 1983.

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 537, dated the 21st March, 1983

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-6Lab./2728.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Sunrise Rubber Industries, Pataudi Road, Gurgaon :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference Nos. 135 of 1982 and 136 of 1982

between

S/SHRI SATISH AND GULAB, WORKMEN AND THE RESPONDENT MANAGEMENT OF
SUNRISE RUBBER INDUSTRIES, PATAUDI ROAD, GURGAON

Present :

Shri Shardha Nand, for the workmen.

Shri S. K. Goswami, for the respondent management.

AWARD

These references No. 135 and 136 of 1982 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/34/82/24908, dated 2nd June, 1982, and ID/GGN/35/82/24280, dated 2nd June, 1982, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between S/Shri Satish and Gulab, workmen and the respondent management of M/s. Sunrise Rubber Industries, Pataudi Road, Gurgaon. The term of the reference was :—

Whether the termination of services of S/Shri Satish and Gulab was justified and in order? If not, to what relief are they entitled?

Notices were issued to the parties on receiving these references. The parties appeared and filed their pleadings. The case of Shri Satish according to his demand notice is that he joined the service of the respondent on 1st January, 1978 as helper on a salary of Rs. 200 per month and he was terminated on 26th March, 1982 without any reason so he is entitled for his reinstatement, continuity of service and back wages.

The case of Shri Gulab according to his claim statement and demand notice is that he joined the service on 1st July, 1976 as moulder on a salary of Rs. 300 and was terminated on 25th March, 1982 without any reason. He was a member of the Union and services were terminated to victimise the workman for union activities.

The case of the respondent according to written statement is that there never exist any relationship of employer and employee of the claimant. So the reference is liable to be dismissed.

On the pleadings of the parties, following issues were framed —

1. Whether the relationship of employer and employee exists between the parties? If so, to what effect?
2. Whether the termination of services of the workman is proper, justified and in order? If not, to what relief are they entitled?

After framing the issues the parties prayed to consolidate these two references as the case are on the same facts and law and against the same management. The request of the parties were exceeded to and the cases were consolidated and it was ordered that the evidence shall be recorded in reference No. 135 of 1982 of Shri Satish and my findings on the issues are as under —

Issue No. 1.

The representative of the workman argued on this issue that as stated by Shri Satish workman as WW-1 he joined the service of the respondent in the year 1978 as Store Fitter and used to receive the good in the Store and he signed Ex. W-1 to W-3 in token of receipt of the goods in the respondent factory. He was receiving the salary of Rs. 200 p.m. which was a fix salary and not paid according to the minimum wages Notifications. He demanded the minimum wages from the respondent and gave a letter Ex. W-4 a complaint through the union for the wages on this the respondent removed the service of the respondent.

In respect of Shri Gulab, the representative of the workman argued that the claimant has come as WW-2 and stated that he is in the service of the respondent for the last six years and he was terminated on 23rd March 1982. He was drawing a salary of Rs. 300 per month at the time of termination. He was not given minimum wages so he made the complaint to the labour authorities and when he asked for the minimum wages he was terminated. The respondent gave no appointment letter, attendance card and wage slips to their workmen and so he has no proof of this. The document Ex. W. 5 is a photo of his marriage which was celebrated in the premises of the factory and Shri Ishwar Dayal, partner of the firm standing in the photo, which clears the relationship between the parties. So he was terminated due to union activities and he was an old employee of the respondent. He further argued that the claimants have produced Shri Umesh Parshad, one of his co-workmen working in the factory at present, who has stated that he is in the service of the respondent for the last 9/10 years as Moulder and he knows Shri Satish and Gulab, who worked with him. Shri Gulab came in the service in the year 1976 and removed in March, 1982. Shri Satish joined the service in the year 1978 as helper and he was removed one day after the termination of services of Shri Gulab. Satish used to receive the goods which

came from outside and vouchers Ex. W-1 to W-3 are signed by him. The respondent never issued the wages slips, ESI or attendance card to any workman. Only 15/20 workmen work in the factory. The representative of the workman further argued that both these claimants were old employees of the factory and they were not paid the Minimum wages, so they were terminated from the services due to union activities of the workmen for the victimisation of the claimants, and they are entitled for reinstatement continuity of service and back wages.

The representative of the respondent argued on this issue that as stated by Shri Ishwar Dayal, partner of the respondent as M. W. 1 he has brought the attendance register of the respondent company from 1st January, 1978 to 26th March, 1982 and produced photo copy of abstract which is Ex. M. 1 and the copy of the registration of firm under the Shops and Commercial Establishment Act is Ex. M. 9. He has stated that Shri Satish never worked in the store. The vouchers filed by him are not issued by this company. These are delivery challans of Friends Engineering Corporation from where they took the job work. Shri Satish might be coming as rickshawpuller of M/s. Friends Engg. Corporation. The representative further argued that Shri Satish has stated in his cross-examination that he is illiterate person and knows nothing about A, B, C, D. when he states that he is illiterate person then how he can be appointed in the store to receive the goods and maintain the records of the goods received. It shows that he was the employee of the respondent and because he has no document to prove employment with the respondent. The workman further stated in his cross-examination that he made no complaint about the less wages paid to the respondent or to any authority of labour department nor he had made any complaint to the union for less wages paid. It shows that he was never workman of the factory and the workman has not able to prove by any way that he was the employee of the respondent. The statement of W. W. 3 Shri Umesh Parshad cannot be believed because he has stated that he has no relationship with Shri Gulab whereas Shri Gulab has stated in his cross-examination that Umesh's sister was married with him and he is his brother in law.

In respect of Shri Gulab, the witness Shri Ishwar Dayal stated that Shri Umesh and Kunmun was their employees. They married their sister with Shri Gulab and they arranged a ceremony at the tubewell of which is adjacent to the factory where they used to live and they call him because the workers' sister Shri Rattan Singh marriage ceremony was taking place very near to the factory so he came to attend marriage ceremony of Shri Umesh's sister because he was their workman. Ex. M. 5 was the photograph taken at the tubewell. He further argued that the respondent produced Shri Rattan Singh as M. W. 2 who has stated that he knows Shri Umesh and Kunmun who are workman of M/s. Sunrise Rubber Industries and living at his tubewell as his tenant. There was marriage of Shri Umesh's sister which was celebrated at the tubewell and photo were taken in which the respondent Shri Ishwar Dayal came. He has further stated that he is a teacher and have a side work as cultivator and he has stated as he has seen. He further argued that the photograph does not prove anything except the presence of the respondent which does not show the relationship between the parties. The workman should have produced the photographer to prove where the marriage ceremony was performed, whether it was performed inside the factory or at the tubewell. The workman produced no such document. The respondent has stated that the marriage ceremony took place at tubewell as Shri Umesh and Kunmun were their tenants. The witness M. W. 2 cannot be disbelieved. The partner of the firm attended the ceremony on the request of the workers who were working in the factory and not because of Shri Gulab. The witness Shri M. W. 1 has specifically stated that he does not know about Shri Gulab and he was not the employee of the respondent. He further argued that Ex. M. 5 to M. 8 are the letters of the labourers of the factory who call their letters at the addresses of the respondent factory because there is no number on the houses and M/s. Sunrise Rubber Industry is the important place where they call the letters.

After hearing the arguments of both the parties and going through the file, I am of the view that the workman has failed to establish the relationship of master and servant between the two because the respondent has produced Ex. M. 1 and M. 2 the photo stat copy of abstract of their attendance register where their name does not exist in the registers. The photo produced by Shri Gulab does not prove the relationship of master and servant in view of the statement of Mr. Rattan Singh M. W. 2. The other claimant Shri Satish also cannot prove the case of relationship and the arguments put forward by the respondent in respect of Shri Satish cannot be disbelieved. The workman has stated that he is illiterate person and he joined as helper. On the other hand he states that he was in the store and used to receive the goods which come from outside. The illiterate person cannot keep the record of the goods which come from outside which he cannot be believed, and the issue is decided in favour of the respondent and against the workman.

Issue No. 2.—

After deciding the issue No. 1 in favour of the respondent there is nothing remains to discuss for second issue. The representative of the respondent argued on this that the respondent factory is registered under shops and Estt. Act, vide Ex. M. 9 and court has no jurisdiction to reinstate this workman even if the relationship had proved, according to law the court can award two

months salary to these workmen. When there is no relationship between the parties as decided in issue No. 1 then these workmen are not entitled to any relief.

This be read in answer to these references,

Dated the 11th March, 1983.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 538, dated 21st March, 1983.

Forwarded (two copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947,

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)-82-6Lab/2729.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Okay Metal Works Pataudi Road, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 231 of 1982

Between

SHRI SATBIR, WORKMAN AND THE RESPONDENT MANAGEMENT
OF M/S OKAY METAL WORKS, PATAUDI ROAD, GURGAON

Shri Shardha Nand for the workmen.

Shri S. K. Goswami for the respondent management.

AWARD

This reference No. 231 of 1982 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGN/38/82/43232, dated 14th September, 1982, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Satbir, workman and the respondent-management of M/s. Okay Metal Works, Pataudi Road, Gurgaon. The terms of the references was :—

Whether the termination of services of Shri Satbir, was justified and in order ?
If not, to what relief is he entitled ?

Notices were issued to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to demand notice and claim statement is that he joined the service of the respondent on 16th August, 1979 as PRESSMAN and drawing a salary of Rs 340/- per month. He put his application for the wages as prescribed by the Haryana Government and also formed a union in the factory. Due to these union activities the claimant was terminated on 6th February, 1982. He worked in the factory from 16th January, 1982 to 6th February, 1982 but the respondent marked absent which is illegal. He was not absent from the duty. So he is entitled for his reinstatement continuity of service and back wages.

The case of the respondent according to written statement is that the case of the claimant is bad due to his own act and acquiescence and admission. The dispute in question does not fall under Section 2-A of the I.D. Act as he abandoned the services of his own accord. So this court has no jurisdiction to decide the matter. The workman joined the service on 1st October, 1981 as Press man on a salary of Rs 340/- per month and worked upto 16th January, 1982. He started remaining absent from duty from 16th January, 1982 and his name was struck off from the roll from 6th February, 1982 after sending two letters dated 21st January, 1982 and 29th January, 1982 to call the workman for his duty. After receiving the registered letter dated 6th February, 1982 the workman came in the factory on 10th February, 1982 and admitted the acknowledge of all the letters sent by the management and also admitted the factum of abandonment of service. He also requested to give his full and final as he is not interested in service. He collected his full and final on the same day. The services of the workman were never terminated by the respondent. He himself left the services of his own accord. So the reference may be answered in their favour.

On the pleadings of the parties, following issues were framed :—

1. Whether the workman abandoned his service of his own accord ? If so to what effect ?
2. Whether the termination services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on the issues are as under :—

Issue No. I :—

The representative of the respondent argued on this issue that as stated by Shri Gobind Ram, Partner of the firm as MW-1. The claimant joined the service on 1st October, 1981 and worked upto 15th January, 1982. When he absented from duty the respondent wrote letter Ex. M-1 on 21st January, 1982. The postal receipt is Ex. M-2 in which letter were sent at his home address and also to the Labour Inspector and at his present address which he has given in the factory. After receiving these two letters the workman did not turn up for joining his duties. Ex. M-3 was against dispatched on the same address on 29th January, 1982. The postal receipt is Ex. M-4 sent at three addresses. He was waited upto 6th February, 1982 and on that day his name was struck off from the roll and Ex. M-5 was sent to the workman and Ex. M-6 is the postal receipt. After receiving these letters the workman came in the factory on 10th February, 1982 and requested to give his full and final accounts. His accounts were cleared and he signed the attendance register in token of this full and final taken at two places. The representative further argued that the signature on the full and final has been admitted by the workman in his cross examination. The abstract of the attendance register is Ex. M-9 and M-10. He has also taken his wages for the month of January. The abstract of attendance is Ex. M-11 from August, 1979 to March, 1982 which shows that the workman joined the services in the month of October, 1981 and his name was struck off from the roll on 6th February, 1982. He worked only 3½ months in the respondent factory. The workman was never terminated by the respondent. He abandoned his services by absenting him self from service. The workman raised the demand notice against the respondent which was rejected by the Government which is Ex. M-10. On the basis of record produced by the respondent before the Conciliation Officer. He further argued that the workman has stated in his cross examination as WW-2 that he has no proof with him to prove that he joined the service of the respondent on 16th August, 1979 so without any document of oral evidence it cannot be believed that the workman has joined the service on 16th August, 1979 as he has stated. The workman has produced no other co workman to corroborate his statement. The only statement of the workman stating therein that he joined the service on 16th August, 1979 cannot be believed. The workman has admitted in his cross examination that the signature on Ex. M-9 the abstract of the attendance register bears his signature. Through he has denied the contents which are written on the register about his admission of absence from duty, but the abstract of the attendane register produced in the court in which the workman has been marked absent and the workman

has produced no such evidence to prove that he was not absent. The testimony of the document cannot be dis-believed. So the claimant worked only 3½ months with the respondent and left the services of his own accord by absenting him self after that he took his full and final and there is no case of the workman.

The representative of the workman argued on this issue that as stated by the workman as WW-1 he joined the service of the respondent on 16th August, 1979 as press man and was getting a salary of Rs 340/- per month and he was removed from service on 10th February, 1982 without any reason. He wrote a letter Ex.W-1 to the respondent stating there in that he was on duty where he has shown absent from duty but the respondent gave no reply. He sent Ex. W-2 and W-3 in this respect. He was working in the night shift and he was not marked presence. The respondent never issued any attendance card to any workman and only 15 workmen worked in the factory. He has signed the attendance register at two places and also the receipt for the wages but he was not paid the wages. The respondent got his signature at two places telling that his services is being made permanant and he was given no knowledge of the full and final. The factory owner did not issue any ESI card attendance card to any workmen, to show about the workman worked in the factory. He was illegally terminated becuase he demanded the minimum wages in the factory which the respondent are not paying to the workers. He also formed the union in the factory and raise the General Demand notice of the wages. The respondent annoyed on this act and his services were terminated.

After hearing the arguments of both the parties has going through the file I am of view that the workman has failed to prove the case. The workman should have produced one or two workmen working in the factory who could say that he worked in the factory in the days of absence shown in the record. He was sent two letters Ex. M-1 and M-3 and the letters were also sent to the Labour Inspector and at his home address and on the address of the workman at Gurgaon but after these letters he gave no response to these letters though he has stated that he never received these letters but he has admitted that he came in the factory on 10th February, 1982 and signed the register. He should not have signed the registers and the voucher of the wages. When he was not given any thing and he was a leader of the union. He has stated that he has no proof of being worker of the factory from 1979, the court cannot decide without any document, oral or written evidence on the file. So the workman has failed to prove his case and issue is decided in favour of the respondent and against the workman. The Government has also rejected the case of the workman previously and after re-opening the demand notice the respondent were not given the opportunity of being heard on the demand notice and the Government sent the same to the Court after hearing the appeal of the workman but the workman has failed to prove his case.

Issue No. II : -

After deciding issue No. I in favour of the respondent there is no need to discuss for issue No. II as the workman has abandoned the services of his own so it is not a termination of service of the workman and the workman is not entitled to any relief.

This be read in answer to this references.

Dated : 11 March, 1983.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endst No. 539, dated the 21st March, 1983.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

ASHOK PAHWA,
Commissioner and Secretary to Government, Haryana,
Labour and Employment Department.